

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Jeff Scott Cofsky d/b/a) DA 03-1581
Texas License Consultants, Waiver of)
Upfront Payment Deadline)
for Auction No. 48)

MEMORANDUM OPINION AND ORDER

Adopted: January 31, 2007

Released: January 31, 2007

By the Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. By this order, we deny a request filed by Warren C. Havens seeking reconsideration of a May 12, 2003, decision of the Chief of the former Auctions and Industry Analysis Division of the Wireless Telecommunications Bureau to waive the upfront payment deadline for Auction No. 48 for Jeff Scott Cofsky d/b/a Texas License Consultants (“TLC”).¹ Mr. Havens argues that the Division’s decision that waived the deadline “does not articulate any standard under applicable Commission rules” to support the requested relief.² Mr. Havens also contends that the specific facts that the Division had found to support its determination lacks a “rational or equitable basis.”³ For the reasons set forth below, we find Mr. Havens’s arguments to be without merit and we deny his request.

II. BACKGROUND

2. Auction No. 48 made available 10,202 licenses for the lower and upper paging bands. That auction concluded in May 2003. As explained in the Division’s May 12, 2003, order,⁴ TLC submitted a short-form application to participate in the auction. TLC’s upfront payment was initially received by the Commission’s lockbox bank prior to the upfront payment deadline. However, as a result of administrative error on the part of TLC’s law firm, the wire transfer payment was not accepted and was returned to the law firm’s bank account late that same day.⁵ Based on a thorough analysis of the facts and circumstances, the Division found that TLC had exercised reasonable diligence and that “TLC would have met the payment deadline but for two administrative errors on the part of” its law firm, which was processing the wire transfer request.⁶ Thus the Division concluded that waiver of the upfront payment

¹ Petition for Reconsideration and Clarification of Warren C. Havens and Telesaurus Holdings GB, LLC (filed June 9, 2003) (“Petition”).

² Petition at 1.

³ *Id.*

⁴ See Letter from Margaret W. Wiener, Chief, Auction and Industry Analysis Division to Sara F. Liebman, Counsel for Jeff Scott Cofsky d/b/a Texas License Consultants, DA 03-1581 (rel. May 12, 2003).

⁵ See *id.*

⁶ *Id.* at 4.

deadline was warranted.⁷ TLC was otherwise found to be qualified to participate in Auction No. 48⁸ and ultimately won certain paging licenses.⁹

3. In his Petition, Mr. Havens concedes that he “was not a competitor of TLC in Auction No. 48.”¹⁰ Rather, Mr. Havens asserts that his standing to seek reconsideration of the Division’s order emanates from his status as a licensee in the Location and Monitoring Service “in geographic regions in which TLC holds or seeks to hold licenses,” which, in Mr. Havens view, makes him a “competitor of TLC.”¹¹

4. TLC submitted an Opposition to the Petition in which it points out, among other things, that Mr. Havens lacks standing to challenge the Division’s decision.¹² Mr. Havens replied.¹³

III. DISCUSSION

5. Mr. Havens has failed to establish standing under Section 1.106(b). To establish standing to file a petition for reconsideration under Section 1.106(b)(1) of the Commission’s rules, Mr. Havens must show that his interests are adversely affected by the action taken by the Division and that he did not have the opportunity to participate in the earlier stages of the proceeding.¹⁴ To determine if a party’s interests have been adversely affected, the Commission frequently relies upon the three-pronged standing test under which a party must establish: (1) a distinct and palpable personal injury-in-fact that is (2) traceable to the respondent’s conduct and (3) redressable by the relief requested.¹⁵ Mr. Havens’s Petition contains no allegation that he or any of his affiliated companies suffered a distinct and palpable injury.¹⁶ Rather, Mr. Havens asserts that his standing arises out of his status as a licensee in the Location and Monitoring Service.¹⁷ Mr. Havens does not explain how the grant of the underlying waiver, the result of which was

⁷ *See id.*

⁸ *See* Auction of Licenses for Upper and Lower Paging Bands; 104 Qualified Bidders, *Public Notice*, 18 FCC Rcd 8059 (2003).

⁹ *See* Lower and Upper Paging Bands Auction Closes; Winning Bidders Announced, *Public Notice*, 18 FCC Rcd 11,154 (2003).

¹⁰ Petition at n. 2.

¹¹ *Id.*

¹² Opposition to Petition for Reconsideration and Clarification of Jeff Scott Cofsky d/b/a Texas License Consultants, at 2-6 (filed June 24, 2003).

¹³ Opposition to Petition for Reconsideration and Clarification of Warren C. Havens and Telesaurus Holdings GB, LLC (filed July 8, 2003).

¹⁴ 47 C.F.R. § 1.106(b)(1) provides that “any party to the proceeding, or any other person whose interests are adversely affected by any action taken by the Commission or by the designated authority, may file a petition requesting reconsideration of the action taken.”

¹⁵ *See* AT&T Corp., Complainant, v. Business Telecom, Inc., Defendants, *Order on Reconsideration*, 16 FCC Rcd 21,750, 21,753-21,754 ¶ 7 (2001); Chris C. Hudgins, *Order on Reconsideration*, 16 FCC Rcd 7941 (2001).

¹⁶ *See* Petition. Moreover, in his Reply, Mr. Havens simply refers back to the Petition by claiming that he had already “explained his interest in the Petition.” Reply at 3.

¹⁷ Petition at 1. We find no merit in Mr. Havens’s argument that a finding by the Bureau’s former Public Safety and Private Wireless Division that he had standing in a licensing matter where there was overlap between his LMS licenses and certain AMTS license should apply here. *See* Reply at 1, n. 1. Unlike that matter, the instant case arises out of the auction qualification process.

to allow TLC to participate in Auction No. 49, caused injury to him or any of his companies. Had TLC's request been denied, Auction No. 49 would have gone forward as scheduled, the subject paging licenses would still have been available, and the licenses won by TLC could have been won by another bidder.

6. As Mr. Havens is well aware, to have standing to challenge an auction outcome, a party must show "that it was able and ready to bid and that the decision of the Commission prevented it from doing so on an equal basis."¹⁸ This is a standard that Mr. Havens himself has cited to ward off a legal challenge in a separate auctions-related proceeding.¹⁹ Clearly, Mr. Havens did not meet this standard, given his concession that he was not a competitor to TLC in Auction No. 49. Without any evidence that Mr. Havens's interest is adversely affected by the Division's action, the Petition lacks merit. We find that he lacks standing to file his Petition for Reconsideration. Accordingly, we must dismiss the Petition.

IV. ORDERING CLAUSE

7. Accordingly, IT IS ORDERED that, pursuant to sections 4(i) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 303(r), and section 0.331 of the Commission's rules, 47 C.F.R. § 0.331, the Petition for Reconsideration and Clarification is DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Fred B. Campbell, Jr.
Chief, Wireless Telecommunications Bureau

¹⁸ *High Plains Wireless v. FCC*, 276 F.3d 599, 605 (D.C. Cir. 2002), citing *U.S. Airwaves, Inc. v. FCC*, 232 F.3d 227, 231-32 (D.C. Cir. 2000).

¹⁹ See Opposition to Supplement to Petition for Reconsideration of AMTS Consortium LLC and Intelligent Transportation & Monitoring Wireless, LLC, Auction No. 61, DA 05-1047 (filed Sept. 8, 2005).